

Senate Bill No. 749

Passed the Senate August 10, 2004

Secretary of the Senate

Passed the Assembly July 1, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 70357 of, and to add Section 70379 to, the Government Code, and to amend Section 366.28 of the Welfare and Institutions Code, relating to courts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 749, Escutia. Court facilities: utilities: Judicial Council.

(1) Existing law requires the cost of utilities, as specified, to be included in the county facilities payment to be determined by the Controller for payment by the county to the Court Facilities Trust Fund.

This bill would revise the calculation of the cost of utilities for those purposes, as specified. The bill would impose a state-mandated local program by increasing the complexity of these calculations.

(2) Existing law establishes the State Court Facilities Construction Fund for the construction and improvement of court facilities, as specified.

This bill would establish the Court Facilities Architecture Revolving Fund, a continuously appropriated fund, to be funded by the transfer of moneys from both state funds and nonstate sources available for the construction, alteration, repair, and improvement of trial and appellate court buildings, as authorized by the Administrative Office of the Courts, and approved by the Department of Finance, as specified. Moneys transferred or deposited in the fund would be available for expenditure by the Administrative Office of the Courts, for the purposes for which they were appropriated or made available, without regard to fiscal years.

(3) Existing law requires the Judicial Council to adopt a rule of court on or before July 1, 2004, implementing provisions regarding writ review of a court order for the placement of a dependent child after parental rights have been terminated.

This bill would extend the deadline for the adoption of that rule of court until January 1, 2005.



(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 70357 of the Government Code is amended to read:

70357. (a) The cost of utilities shall be included in the county facilities payment by calculating the average consumption of utilities for the fiscal years 1995–96 to 1999–2000, inclusive, multiplying the consumption averages by the 1999–2000 rates, and multiplying the value by the increase in the inflation index specified in Section 70355 from January 2000, to the month of the date of transfer of responsibility for the court facilities from the county to the state, inclusive. The consumption rates for 1999–2000 shall be the average of the rates for each month of that fiscal year.

(b) If the county states in its county facilities payment calculation under Section 70363 that either utility consumption amounts or rates are not reasonably available for any court facility for any or all of the 1995–96 to 1999–2000, inclusive, fiscal years after a good faith effort to obtain those consumption amounts or rates, then the cost of utilities for that facility shall be included in the county facilities payment by calculating the five-year average of the utility costs incurred in connection with the operation of the building for the 1995–96 to 1999–2000, inclusive, fiscal years. This amount shall be calculated by multiplying the yearly utility costs for each court facility for each of the five fiscal years from



1995–96 to 1999–2000, inclusive, by the change in the inflation index specified in Section 70355 from January of that fiscal year to the month of the date of transfer of responsibility for the court facility from the county to the state, inclusive, and then averaging the five inflation-adjusted yearly values.

(c) If the county states in its county facilities payment calculation under Section 70363 that the utility cost information described in subdivisions (a) and (b) is not reasonably available for any court facilities for any or all of the fiscal years 1995–96 to 1999–2000, inclusive, after a good faith effort to obtain that information, then the cost of utilities for those facilities shall be calculated using all relevant information available to the county and to the Administrative Office of the Courts.

(d) For purposes of any good faith statement made pursuant to subdivision (b) or (c), the county shall include a detailed description of all activities it undertook to obtain the information and the results of each activity.

(e) If the county implemented a special improvement to increase energy efficiency during the 1995–96 fiscal year or thereafter, and that special improvement resulted in measurable and ongoing net cost savings, then the county may include a description of the special improvement and the resulting cost savings as part of its county facilities payment calculation under Section 70363. The amount of any reduction in the county facilities payment calculation shall be limited to the demonstrable ongoing cost savings to the state directly resulting from the special improvement only to the extent not already reflected in the cost or consumption data used to determine utilities costs. The county shall document or demonstrate the savings and the fact that the savings are not already reflected.

(f) As used in this section, “utility costs” include, but are not limited to, natural gas, heating oil, electricity, water, sewage, and garbage. Utility costs shall be included without regard to whether payment of the costs was made by the county, the court, or another entity except that the amount of specific utility costs may not be included in the county facilities payment if all of the following conditions are satisfied:

(1) A lease expressly provides that the utilities are to be paid by the lessor.



(2) There is no payment by the lessee for the utilities, except as part of the lease payment.

(3) The lease payment is included in the county facilities payment.

SEC. 2. Section 70379 is added to the Government Code, to read:

70379. (a) The Court Facilities Architecture Revolving Fund is hereby established in the State Treasury, and, notwithstanding Section 13340, the fund is continuously appropriated, without regard to fiscal years.

(1) With the approval of the Department of Finance, and except as otherwise specified in this section, there shall be transferred to, or deposited in, the fund all money appropriated, contributed, or made available from any source, including sources other than state appropriations, for the purposes described in paragraph (2).

(2) Moneys transferred to, or deposited in, the fund shall be those administered by the Administrative Office of the Courts under subdivision (b) of Section 70374 for the construction, alteration, repair, and improvement of trial and appellate court buildings, including, but not limited to, services, new construction, major construction, minor construction, maintenance, improvements, and equipment, and other building and improvement projects.

(3) In addition to the approval of the Department of Finance, the transfer or deposit of moneys into the fund shall be authorized by the Administrative Office of the Courts, both with regard to funds appropriated for the purposes specified in paragraph (2) or, as to funds from sources other than state appropriations, subject to any written agreement between the contributor or contributors of funds and the Administrative Office of the Courts.

(b) Money from state sources transferred to, or deposited in, the fund for construction, services, equipment, repair, or improvement shall be an amount necessary based on the actual, known, or firm fixed price, upon approval of the Department of Finance.

Any amount available in the state appropriation that is in excess of the amount necessary based upon final actual costs of the completed contract shall be transferred immediately to the credit of the fund from which the appropriation was made.



(c) Money transferred or deposited in the fund pursuant to subdivision (a) shall be available for expenditure by the Administrative Office of the Courts for the purposes for which appropriated, contributed, or made available, without regard to fiscal years.

SEC. 3. Section 366.28 of the Welfare and Institutions Code is amended to read:

366.28. (a) The Legislature finds and declares that delays caused by appeals from court orders designating the specific placement of a dependent child after parental rights have been terminated may cause a substantial detriment to the child. The Legislature recognizes that the juvenile court intervenes in placement decisions after parental rights have been terminated only in exceptional circumstances, and this section is not intended to place additional authority or responsibility on the juvenile court.

(b) (1) After parental rights have been terminated pursuant to Section 366.26, an order by the court that a dependent child is to reside in, be retained in, or be removed from a specific placement, is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule of court, to substantively address the specific placement order that is challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(c) This section does not affect the right of a parent, a legal guardian, or the child to appeal any order that is otherwise appealable and that is issued at a hearing held pursuant to Section 366.26.

(d) The Judicial Council shall adopt a rule of court on or before January 1, 2005, to implement this section. This section shall become operative after the rule of court is adopted.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this



act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is necessary that this act take effect immediately as an urgency statute for the following reasons:

(a) The recalculation of the cost of utilities to be included in the county facilities payment is necessary in order to recognize the proper shift of utility costs as a result of the transfer of court facilities to the state.

(b) The Architecture Revolving Fund (ARF) is necessary to allow funds to be expended beyond the budget year in which they are appropriated. Typically, capital projects have multiple phases such as acquisition, preliminary plans, working drawings, and construction. All phases cannot be completed in the budget year, so the funds must be encumbered through a transfer to the ARF, which will enable the Judicial Council to liquidate the funds beyond the budget year.

(c) The current deadline for adoption of court rules pursuant to Chapter 247 of the Statutes of 2003 will not be met. In order to avoid confusion about the effective date of those provisions, it is necessary that the deadline of July 1, 2004, be extended to January 1, 2005.



Approved _____, 2004

Governor

